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**BY U.S. CERTIFIED MAIL**

March 21, 2017

Citizen Suit Coordinator  
Environment and Natural Resources Division  
Law and Policy Section  
P.O. Box 7415  
Ben Franklin Station  
Washington, DC 20044-7415

Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Attorney General  
U.S. Department of Justice  
Citizen Suit Coordinator  
Room 2615  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001



Re: *Environmental Defense Center v. Ventura Regional Sanitation District*  
United States District Court Case No. 2:16-cv-05607-VAP-FFM  
Consent Decree; 45-day review

Dear Citizen Suit Coordinators,

On March 15, 2017, the parties in the above-captioned case entered into a Proposed Consent Decree setting forth mutually agreeable settlement terms to resolve the matter in its entirety. Pursuant to the terms of the Consent Decree and 40 C.F.R. § 135.5, the enclosed Consent Decree is being submitted to the U.S. Environmental Protection Agency and the U.S. Department of Justice for a 45-day review period. If you have any questions regarding the Consent Decree, please feel free to contact me or counsel for Defendant listed below. Thank you for your attention to this matter.

Sincerely,

Douglas J. Chermak  
Attorneys for Plaintiff Environmental Defense Center

cc via First Class Mail: Alexis Strauss, Acting Regional Administrator, EPA Region 9

cc via e-mail: Robert Kwong, Counsel for Defendants, rk Wong@atozlaw.com

Encl.

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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

ENVIRONMENTAL DEFENSE  
CENTER, a non-profit corporation,

Plaintiff,

vs.

VENTURA REGIONAL  
SANITATION DISTRICT, a public  
agency.

Defendant.

Case No. 2:16-cv-05607-VAP-FFM

**[PROPOSED] CONSENT DECREE**

**CONSENT DECREE**

WHEREAS, Plaintiff Environmental Defense Center ("EDC") is a non-profit public benefit corporation and law firm dedicated to the preservation and enhancement of the local environment primarily within Ventura, Santa Barbara, and San Luis Obispo Counties through education, advocacy, and legal action;

WHEREAS, Defendant Ventura Regional Sanitation District ("VRSD") is a public waste management agency, formed and authorized pursuant to California Health & Safety Code § 4700 et seq., that operates the Toland Road Landfill, a municipal solid waste landfill facility located at 3500 Toland Road in Santa Paula, CA ("Facility"). EDC and VRSD are collectively referred to herein as the "Parties";

WHEREAS, storm water discharges associated with industrial activity at the Facility are regulated pursuant to the National Pollutant Discharge Elimination

1 System ("NPDES") General Permit No. CAS000001 [State Water Resources Control  
2 Board], Water Quality Order No. 92-12-DWQ (as amended by Water Quality Order  
3 97-03-DWQ and as subsequently amended by Water Quality Order No. 2014-0057-  
4 DWQ) (hereinafter the "Permit"), issued pursuant to Section 402 of the Federal Water  
5 Pollution Control Act ("Clean Water Act" or "the Act"), 33 U.S.C. §1342:

7 WHEREAS, the Permit includes the following requirements for all permittees,  
8 including VRSD: 1) develop and implement a storm water pollution prevention plan  
9 ("SWPPP"); 2) control pollutant discharges using best available technology  
10 economically achievable ("BAT") and best conventional pollutant control technology  
11 ("BCT") to prevent or reduce pollutants; 3) implement BAT and BCT through the  
12 development and application of Best Management Practices ("BMPs"), which must be  
13 included and updated in the SWPPP; and 4) when necessary, implement additional  
14 BMPs to prevent or reduce any pollutants that are causing or contributing to any  
15 exceedance of water quality standards:  
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18 WHEREAS, on May 3, 2016, EDC served VRSD, the Clerk of VRSD's Board,  
19 the Administrator of the Environmental Protection Agency ("EPA"), the Executive  
20 Director of the State Water Resources Control Board ("State Board"), the Executive  
21 Officer of the Los Angeles Regional Water Quality Control Board ("Regional  
22 Board"), the U.S. Attorney General, and the Regional Administrator of the EPA  
23 (Region 9) with a notice of intent to file suit ("60-Day Notice") under Sections  
24 505(a)(1) and (f) of the Clean Water Act, 33 U.S.C. § 1365(b)(1)(A), alleging  
25 violations of the Act and the Permit at the Facility:  
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28 WHEREAS, EDC filed a complaint ("Complaint") against VRSD in the United

1 States District Court, Central District Court of California on July 27, 2016, entitled  
2 *Environmental Defense Center v. Ventura Regional Sanitation District* (Case No.  
3 2:16-cv-05607-VAP-FFM);  
4

5 WHEREAS, EDC contends in its 60-Day Notice and Complaint that, among  
6 other things, VRSD has repeatedly discharged polluted storm water in violation of the  
7 Permit and the Clean Water Act;

8 WHEREAS, VRSD denies all allegations set forth in the 60-Day Notice and  
9 Complaint and contends that EDC's Complaint should be dismissed;  
10

11 WHEREAS, VRSD, whenever there is sufficient storm water flow, has sampled  
12 water upstream from the Facility during storm events and has measured high levels of  
13 pollutants in said water; and

14 WHEREAS, VRSD has made plans to make significant investments and  
15 improvements to the Facility's storm water pollution prevention plan;  
16

17 WHEREAS, the Parties, through their authorized representatives and without  
18 either adjudication of EDC's claims or any admission by VRSD of any alleged  
19 violation or other wrongdoing, believe it is in their mutual interest and choose to  
20 resolve in full EDC's allegations in the 60-Day Notice and Complaint through  
21 settlement and avoid the cost and uncertainties of further litigation;  
22

23 NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE  
24 PARTIES, AND ORDERED AND DECREED BY THE COURT, AS FOLLOWS:

25 **I. COMMITMENTS OF VRSD**

26 1. In order to reduce or prevent pollutants associated with industrial activity  
27 from discharging via storm water to the waters of the United States, VRSD shall  
28

1 implement appropriate structural and non-structural BMPs, as required by the Permit.  
2 as described more fully below.

3       2.     **Maintenance of Implemented Storm Water Controls.** VRSD agrees  
4 that the Facility shall maintain in good working order all storm water collection and  
5 management systems currently installed or to be installed pursuant to this Consent  
6 Decree, including but not limited to, existing housekeeping measures.

7  
8       3.     **Improvements to Detention Basin.**

- 9  
10       a.     In order to increase the capacity and improve the performance of  
11 the main storm water detention basin at the Facility, by April 1,  
12 2017, VRSD shall raise the riser or intake pipe by at least 5 feet.
- 13       b.     In order to help drain or discharge cleaner and clearer storm water  
14 collected in the main storm water detention basin from the top  
15 rather than the bottom, by April 1, 2017, VRSD shall place and put  
16 into operation two sets of floating skimmers at different heights  
17 within the main storm water detention basin to accomplish that  
18 goal.
- 19       c.     In order to allow for more time for storm water to settle in the  
20 main storm water detention basin, by April 1, 2017, VRSD shall  
21 plug the existing French drain outlet in the main storm water  
22 detention basin by capping the pipe with a blind flange.
- 23       d.     Within fourteen (14) days of each of the above storm water  
24 pollution prevention program improvements, VRSD shall e-mail  
25 EDC digital photographs confirming said improvements.  
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1           **4.     Improvements to Slow Velocity of Storm Water Leading to**  
2           **Detention Basin.**

- 3           a.     To slow the velocity of storm water flowing towards the main and  
4                 intermediate storm water detention basins, by May 1, 2017, VRSD  
5                 shall enhance the check dams throughout the Facility by both  
6                 implementing additional check dams and enhancing the  
7                 effectiveness of already implemented check dams.  
8  
9           b.     To reduce sediment loading to the detention basin, by June 1,  
10                2017, VRSD shall: (i) ensure that all asphalt or concrete lined  
11                storm water drainage channels that lead to the intermediate or main  
12                storm water detention basins are fitted with intermittently placed  
13                gravel bags or sand bags or compost filter socks; (ii) lay down  
14                jute-netting over any earthen swales that are not stabilized by  
15                vegetation or structural BMPs in the Facility; and (iii) hydroseed  
16                and water non-vegetated slopes and areas around the Facility.  
17  
18           c.     To maintain the effectiveness of check dams and the use of gravel  
19                or sand bags or compost filter socks in the Facility's asphalt or  
20                concrete storm water drainage channels, VRSD shall maintain a  
21                written, annual log of check dam and sand or gravel bag or  
22                compost filter sock placements, improvements and adjustments at  
23                the Facility along with a map of the Facility showing the location  
24                of these check dams and shall provide a digital copy of this log and  
25                map to EDC for its review on an annual basis. VRSD agrees to  
26  
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1 provide EDC with an initial map of check dam and sand or gravel  
2 bag or compost filter sock placements at the Facility, and related  
3 digital photographs, within thirty (30) days of the effective date of  
4 this Consent Decree. Within thirty (30) days of receipt of the log,  
5 EDC may provide comments to VRSD regarding potential  
6 modifications or improvements to the practices described in the  
7 log. Should EDC provide such comments, VRSD agrees to meet  
8 and confer with EDC to discuss and resolve its concerns, if any,  
9 that VRSD may have with these EDC comments within sixty (60)  
10 days of the receipt of EDC's comments. Any failure of the Parties  
11 to resolve EDC's or VRSD's concerns shall be governed by the  
12 dispute resolution provisions set forth in Paragraph 12 of this  
13 Consent Decree.  
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16  
17 d. In order to remove or prevent sediment in the storm water drainage  
18 channels, VRSD shall conduct post-rain event review and  
19 maintenance of these check dams and placement of gravel or sand  
20 bags or compost filter socks no less than six (6) times per year.  
21 VRSD shall maintain a regular schedule of hydroseeding and  
22 watering of slopes at the Facility to reduce erosion and sediment in  
23 storm water drainage channels.  
24

25 **5. Revised Hydrology Report.**

- 26  
27 a. By September 15, 2017, VRSD shall prepare, or cause to be  
28 prepared, an amendment to the existing 2007 Hydraulics and

1 Hydrology Drainage Report for Toland Landfill prepared by  
2 Hawks & Associates and send it to EDC. This hydrology report  
3 amendment shall, at a minimum, include the following:  
4

- 5 i. A detailed map of the Facility's current storm water  
6 conveyance system, including direction of flows and location  
7 of the eastern- and western-perimeter conveyance systems,  
8 and any pipes, berms, channels, and catch basins used to  
9 collect, divert, and/or retain storm water runoff.  
10  
11 ii. A detailed, quantitative analysis that further supports or  
12 demonstrates that the Facility's storm water conveyances and  
13 main storm water detention basin are adequately sized to  
14 handle a 100-year, 24-hour rainfall event for both current  
15 landfill (i.e., as of February 2017) conditions as well as  
16 future (capped or closed) landfill conditions.  
17

- 18 b. Within thirty (30) days of receipt of the hydrology report  
19 amendment, EDC may provide comments to VRSD regarding  
20 potential modifications or improvements to the report. Should  
21 EDC provide such comments, VRSD agrees to meet and confer  
22 with EDC to discuss and resolve its concerns, if any, that VRSD  
23 may have with these EDC comments within sixty (60) days of the  
24 receipt of EDC's comments. Any failure of the Parties to resolve  
25 EDC's or VRSD's concerns shall be governed by the dispute  
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1 resolution provisions set forth in Paragraph 12 of this Consent  
2 Decree.

3 6. **Updates to SWPPP Map.** Within thirty (30) days of the Effective Date,  
4 VRSD shall update the site maps included in its SWPPP for the Facility to depict  
5 changes made to the Facility, including those described in Paragraphs 2-4 of this  
6 Consent Decree.

7  
8 7. **Amendment of SWPPP.** Within thirty (30) days of the Effective Date  
9 of this Consent Decree, VRSD shall amend the Facility's SWPPP to incorporate all  
10 changes, improvements, sample log forms, and best management practices set forth in  
11 or resulting from this Consent Decree. VRSD shall ensure that all maps, tables, and  
12 text comply with the requirements of the Permit or other applicable regulatory  
13 standard. VRSD shall revise, as necessary, the SWPPP to describe all structural and  
14 non-structural BMPs, details of the measures to be installed, and discuss why such  
15 BMPs should be effective in addressing the quality of storm water discharges from the  
16 Facility. A copy of the amended SWPPP shall be provided to EDC within thirty (30)  
17 days of completion and submittal to the Regional Board.

18  
19 8. **Reports.** During the term of this Consent Decree, VRSD shall provide  
20 EDC with a copy of all documents submitted to the Regional Board or the State Board  
21 concerning the Facility's compliance with the Permit. Such documents and reports  
22 shall be transmitted to EDC via electronic mail, if feasible, or by U.S. Mail when  
23 electronic transmission is not feasible, at the time the documents are due to be  
24 submitted to the Regional Board or State Board.

1           **II.     MITIGATION, FEES, AND COSTS**

2           **9.     Mitigation Payment.** In recognition of the good faith efforts by VRSD  
3 to comply with all aspects of the Permit and the Clean Water Act at the Facility, and  
4 in lieu of payment by VRSD of any civil penalties under the Act, which may have  
5 been assessed in this action if it had been adjudicated adverse to VRSD, the Parties  
6 agree that VRSD will pay the sum of seventy-five thousand dollars (\$75,000.00) to  
7 The Nature Conservancy ("TNC") for the sole purpose of funding TNC's on-going  
8 invasive species removal in the Santa Clara River Watershed in order to improve the  
9 quality, flow and quantity of surface water and ground water, to improve aquatic  
10 species habitat, and to reduce a serious fire hazard. Payment shall be provided to  
11 TNC as follows: The Nature Conservancy, 532 East Main Street, Suite #200, Ventura,  
12 CA 93001, Attention: Laura Reige, Santa Clara River & Coast Project Director.  
13 Payment shall be made by VRSD to TNC within fifteen (15) calendar days of the  
14 Effective Date. VRSD shall copy EDC with any correspondence and a copy of the  
15 check sent to TNC. TNC shall provide notice to the Parties within thirty (30) days of  
16 when the funds are disbursed or used by TNC, setting forth the purpose of the funds.

17           **10.    Reimbursement of Fees and Costs.** VRSD shall reimburse EDC in an  
18 amount not to exceed sixty-five thousand dollars (\$65,000) to help defray EDC's  
19 reasonable investigation, expert, and attorneys' fees and costs, and all other  
20 reasonable costs incurred as a result of investigating the activities at the Facility  
21 related to this Consent Decree, bringing these matters to VRSD's attention, and  
22 negotiating a resolution of this action in the public interest. VRSD shall tender said  
23 payment, payable to "Environmental Defense Center", within thirty (30) days of the  
24

1 Effective Date.

2       11.   **Compliance Monitoring Funds.** As reimbursement for EDC's future  
3 fees and costs that may be incurred in order for EDC to monitor VRSD's compliance  
4 with this Consent Decree and to effectively meet and confer and evaluate storm water  
5 monitoring results for the Facility, VRSD agrees to reimburse EDC for fees and costs  
6 incurred in overseeing the implementation of this Consent Decree up to, but not  
7 exceeding, five thousand dollars (\$5,000.00) per reporting year or a total of no more  
8 than \$15,000 for the three reporting years set out in this Consent Decree below.

9 Examples of reimbursable monitoring fees and costs include, but are not limited to,  
10 those incurred by EDC or its counsel to conduct review of water quality sampling  
11 reports, review of annual summary reports, review of the hydrology report, review of  
12 other documents submitted pursuant to this Consent Decree, discussion with  
13 representatives of VRSD concerning potential changes to compliance requirements,  
14 water quality sampling, informal dispute resolution, and other actions necessary to  
15 monitor and ensure VRSD's compliance with this Consent Decree. To request  
16 reimbursement, EDC shall provide VRSD with an annual invoice containing an  
17 itemized description for any fees and costs claimed for the prior twelve (12) month  
18 period. Up to a maximum of three payments (one addressing monitoring associated  
19 with the 2016-2017 reporting year, one addressing any monitoring associated with the  
20 2017-2018 reporting year, and one addressing any monitoring associated with the  
21 2018-2019 reporting year) shall be made payable to "Environmental Defense Center"  
22 within thirty (30) days of receipt of an invoice from EDC which contains an itemized  
23 description of fees and costs incurred by EDC to monitor implementation of the  
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1 Consent Decree during the previous twelve (12) months.

2       **12. Dispute Resolution.** If a dispute between the Parties under this Consent  
3 Decree arises, or either Party believes that a breach of this Consent Decree has  
4 occurred, the Parties shall schedule a meet and confer within ten (10) business days of  
5 receiving written notification from the other Party of a request for a meeting to  
6 determine whether a violation of this Consent Decree has occurred and to develop a  
7 mutually agreed upon plan, including implementation dates, to resolve the dispute. In  
8 the event that such disputes cannot be resolved through this meet and confer process,  
9 the Parties agree to request a settlement meeting before the Magistrate Judge assigned  
10 to this action. The Parties agree to file any waivers necessary for the Magistrate Judge  
11 to preside over any settlement conference pursuant to this Paragraph. In the event that  
12 the Parties cannot resolve the dispute by the conclusion of the settlement meeting with  
13 the Magistrate Judge, the Parties agree to submit the dispute via motion to the District  
14 Court. In resolving any dispute arising from this Consent Decree, the Court shall have  
15 discretion to award attorneys' fees and costs to either party. The relevant provisions  
16 of the then-applicable Clean Water Act and Rule 11 of the Federal Rules of Civil  
17 Procedure shall govern the allocation of fees and costs in connection with the  
18 resolution of any disputes before the District Court. The District Court's award of any  
19 relief in a dispute brought pursuant to this paragraph shall be limited to compliance  
20 orders and awards of attorneys' fees and costs, subject to proof.

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25       **III. JURISDICTION OVER PARTIES AND SUBJECT MATTER OF**  
26       **THE CONSENT DECREE**

27       **13. Jurisdiction.** For the purposes of this Consent Decree, the Parties  
28

1 stipulate that the United States District Court of California, Central District of  
2 California, has jurisdiction over the Parties and subject matter of this Consent Decree.  
3 The Parties stipulate that venue is appropriate in the Central District of California and  
4 that VRSD will not raise in the future as part of enforcement of this Consent Decree  
5 whether EDC has standing to bring the Complaint or any subsequent action or motion  
6 pursuant to the Dispute Resolution procedures herein.  
7

8       14. **Submission of Consent Decree to DOJ.** Within three (3) business days  
9 of receiving all of the Parties' signatures to this Consent Decree, EDC shall submit  
10 this Consent Decree to the U.S. Department of Justice ("DOJ") and EPA for agency  
11 review consistent with 40 C.F.R. §135.5. The agency review period expires forty-five  
12 (45) calendar days after receipt by the DOJ, evidenced by correspondence from DOJ  
13 establishing the review period. In the event DOJ comments negatively on the  
14 provisions of this Consent Decree, the Parties agree to meet and confer to attempt to  
15 resolve the issues raised by DOJ.  
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#### 18       **IV. WAIVER, RELEASES AND COVENANTS NOT TO SUE**

19       15. In consideration of the payments that are to be made by VRSD above,  
20 and except as otherwise provided by this Consent Decree, the EDC hereby covenants  
21 not to sue or to take administrative action against VRSD for any allegations and  
22 claims set forth in the 60-Day Notice Letter and Complaint for storm water pollution  
23 discharge at the Facility up to and including the Termination Date of this Consent  
24 Decree.  
25

26       16. The Parties forever and fully release each other and their respective  
27 parents, affiliates, subsidiaries, divisions, insurers, successors, assigns, and current  
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1 and former employees, attorneys, officers, directors and agents from any and all  
2 claims and demands of any kind, nature, or description whatsoever, and from any and  
3 all liabilities, damages, injuries, actions or causes of action, either at law or in equity,  
4 which the Parties have against each other arising from EDC's allegations and claims  
5 as set forth in the 60-Day Notice Letter and Complaint for storm water pollution  
6 discharges at the Facility up to and including the Termination Date of this Consent  
7 Decree.  
8

9  
10 17. The Parties acknowledge that they are familiar with section 1542 of the  
11 California Civil Code, which provides:

12 A general release does not extend to claims which the creditor does not  
13 know or suspect to exist in his or her favor at the time of executing the  
14 release, which if known by him or her must have materially affected his or  
her settlement with the debtor.

15 The Parties hereby waive and relinquish any rights or benefits they may have under  
16 California Civil Code section 1542 with respect to any other claims against each other  
17 arising from, or related to, the allegations and claims as set forth in the 60-Day Notice  
18 Letter and Complaint for storm water pollution discharges at the Facility up to and  
19 including the Termination Date of this Consent Decree.  
20

21 18. **No Admission.** The Parties enter into this Consent Decree for the  
22 purpose of avoiding prolonged and costly litigation. Nothing in this Consent Decree  
23 shall be construed as, and VRSD expressly does not intend to imply, any admission as  
24 to any fact, finding, issue of law, or violation of law, nor shall compliance with this  
25 Consent Decree constitute or be construed as an admission by VRSD of any fact,  
26 finding, conclusion, issue of law, or violation of law. However, this Paragraph shall  
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1 not diminish or otherwise affect the obligation, responsibilities, and duties of the  
2 Parties under this Consent Decree.

3 **V. MISCELLANEOUS PROVISIONS**

4  
5 19. **Effective Date.** The Effective Date of this Consent Decree shall be upon  
6 the subsequent entry of the Consent Decree by the Court.

7 20. **Term of Consent Decree.** This Consent Decree shall terminate on  
8 December 21, 2019, or through the conclusion of any proceeding to enforce this  
9 Consent Decree initiated prior to December 21, 2019, or until the completion of any  
10 payment or affirmative duty required by this Consent Decree, whichever is the later  
11 occurrence.  
12

13 21. **Execution in Counterparts.** The Consent Decree may be executed in  
14 one or more counterparts which, taken together, shall be deemed to constitute one and  
15 the same document.  
16

17 22. **Facsimile Signatures.** The Parties' signatures to this Consent Decree  
18 transmitted by facsimile or electronic mail transmission shall be deemed binding.

19 23. **Construction.** The language in all parts of this Consent Decree, unless  
20 otherwise stated, shall be construed according to its plain and ordinary meaning. The  
21 captions and paragraph headings used in this Consent Decree are for reference only  
22 and shall not affect the construction of this Consent Decree.  
23

24 24. **Authority to Sign.** The undersigned are authorized to execute this  
25 Consent Decree on behalf of their respective parties and have read, understood and  
26 agreed to all of the terms and conditions of this Consent Decree.  
27

28 25. **Integrated Consent Decree.** All agreements, covenants, representations

1 and warranties, express or implied, oral or written, of the Parties concerning the  
2 subject matter of this Consent Decree are contained herein.

3       26. **Severability.** In the event that any of the provisions of this Consent  
4 Decree are held by a court to be unenforceable, the validity of the enforceable  
5 provisions shall not be adversely affected.  
6

7       27. **Choice of Law.** This Consent Decree shall be governed by the laws of  
8 the United States, and where applicable, the laws of the State of California.  
9

10       28. **Full Settlement.** This Consent Decree constitutes a full and final  
11 settlement of this matter. It is expressly understood and agreed that the Consent  
12 Decree has been freely and voluntarily entered into by the Parties with and upon  
13 advice of counsel.

14       29. **Negotiated Agreement.** The Parties have negotiated this Consent  
15 Decree, and agree that it shall not be construed against the party preparing it, but shall  
16 be construed as if the Parties jointly prepared this Consent Decree, and any  
17 uncertainty and ambiguity shall not be interpreted against any one party.  
18

19       30. **Modification of the Agreement.** This Consent Decree, and any  
20 provisions herein, may not be changed, waived, or discharged unless by a written  
21 instrument signed by the Parties.  
22

23       31. **Assignment.** Subject only to the express restrictions contained in this  
24 Consent Decree, all of the rights, duties and obligations contained in this Consent  
25 Decree shall inure to the benefit of and be binding upon the Parties, and their  
26 successors and assigns.  
27

28       32. **Mailing of Documents to EDC/Notices/Correspondence.** Any notices

1 or documents required or provided for by this Consent Decree or related thereto that  
2 are to be provided to EDC pursuant to this Consent Decree shall be, to the extent  
3 feasible, sent via electronic mail transmission to the e-mail addresses listed below or,  
4 if electronic mail transmission is not feasible, via certified U.S. Mail with return  
5 receipt, or by hand delivery to the following address:

7 EDC:

8 Maggie Hall  
9 Environmental Defense Center  
10 906 Garden Street  
11 Santa Barbara, CA 93101  
12 E-mail: mhall@environmentaldefensecenter.org

13 With copies sent to:

14 Douglas Chermak  
15 Lozeau Drury LLP  
16 410 12th Street, Suite 250  
17 Oakland, CA 94607  
18 E-mail: doug@lozeaudrury.com

19 Unless requested otherwise by VRSD, any notices or documents required or  
20 provided for by this Consent Decree or related thereto that are to be provided to  
21 VRSD pursuant to this Consent Decree shall, to the extent feasible, be provided by  
22 electronic mail transmission to the e-mail addresses listed below, or, if electronic mail  
23 transmission is not feasible, by certified U.S. Mail with return receipt, or by hand  
24 delivery to the addresses below:

25 VRSD:

26 Chris Theisen, General Manager  
27 Ventura Regional Sanitation District  
28 1001 Partridge Drive, Suite #150  
Ventura, CA 93003-0704  
E-mail: ChrisTheisen@vrsd.com

1  
2 With copies sent to:

3 Robert N. Kwong  
4 Arnold LaRochelle Mathews VanConas & Zirbel LLP  
5 300 Esplanade Drive, Suite 2100  
6 Oxnard, CA 93036  
7 E-mail: rk Wong@atozlaw.com

8 Notifications of communications shall be deemed submitted on the date that they are  
9 emailed, or postmarked and sent by first-class mail or deposited with an overnight  
10 mail/delivery service. Any changes of address or addressees shall be communicated  
11 in the manner described above for giving notices.

12 33. **Impossibility of Performance.** No Party shall be considered to be in  
13 default in the performance of any of its obligations under this Consent Decree when  
14 performance becomes impossible, despite the timely good faith efforts of the Party,  
15 due to circumstances beyond the Party's control, including without limitation any act  
16 of God, act of war or terrorism, fire, earthquake, flood, and restraint by court order or  
17 public authority. "Circumstances beyond the Party's control" shall not include normal  
18 inclement weather, economic hardship or inability to pay. Any Party seeking to rely  
19 upon this paragraph shall have the burden of establishing that it could not reasonably  
20 have been expected to avoid, and which by exercise of due diligence has been unable  
21 to overcome, the impossibility of performance.  
22

23  
24 34. If for any reason the DOJ or the District Court should decline to approve  
25 this Consent Decree in the form presented, the Parties shall use their best efforts to  
26 work together to modify the Consent Decree within thirty (30) days so that it is  
27 acceptable to the DOJ or the District Court. If the Parties are unable to modify this  
28



1 Consent Decree in a mutually acceptable manner that is also acceptable to the District  
2 Court, this Consent Decree shall immediately be null and void as well as inadmissible  
3 as a settlement communication under Federal Rule of Evidence 408 and California  
4 Evidence Code section 1152.  
5

6 35. The settling Parties hereto enter into this Consent Decree, Order and  
7 Final Judgment and submit it to the Court for its approval and entry as a final  
8 judgment.  
9

10 [SIGNATURES TO APPEAR ON THE FOLLOWING PAGE]  
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1 ENVIRONMENTAL DEFENSE CENTER

2 Date: March 10, 2017

3  
4 Judith Pirlowitz  
5 President, Board of Directors  
6 Environmental Defense Center

7 VENTURA REGIONAL SANITATION DISTRICT

8  
9 Date: 3/15, 2017

10 William Weirick  
11 William Weirick  
12 Chairperson, Board of Directors

13  
14 Approved as to form:

15 LOZEAU DRURY LLP

16  
17 Date: 13 March, 2017

18 Douglas Chertnak  
19 Douglas Chertnak  
20 Attorneys for Environmental Defense Center

21 ENVIRONMENTAL DEFENSE CENTER

22  
23 Date: March 9, 2017

24 Margaret Hall  
25 Margaret Hall  
26 Attorney for Environmental Defense Center  
27  
28

ARNOLD LAROCHELLE MATTHEWS VANCONAS & ZIRBEL LLP

Date: March 15, 2017

  
Robert N. Kwong  
Attorney for Ventura Regional Sanitation District

APPROVED AND SO ORDERED, this \_\_\_\_ day of \_\_\_\_\_.

UNITED STATES DISTRICT JUDGE

\_\_\_\_\_  
Hon. Virginia A. Phillips